

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

19-CR-576 (BMC)

United States Courthouse
Brooklyn, New York

5 -versus-

October 07, 2020
9:00 a.m.

6 GENARO GARCIA LUNA,

7 Defendant.

8 -----x
9 TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE
10 BEFORE THE HONORABLE BRIAN M. COGAN
11 UNITED STATES DISTRICT JUDGE

11 APPEARANCES

12 For the Government: UNITED STATES ATTORNEY'S OFFICE
Eastern District of New York
13 271 Cadman Plaza East
Brooklyn, New York 11201
14 BY: MICHAEL ROBOTTI, ESQ.
RYAN HARRIS, ESQ.
15 ERIN REID, ESQ.
Assistant United States Attorneys

16 For the Defendant: BY: CESAR DECASTRO, ESQ.

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20 Proceedings recorded by mechanical stenography. Transcript
21 produced by computer-aided transcription.

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(Video Conference.)

THE COURTROOM DEPUTY: United States V. Luna, docket
19-CR-576.

Counsel state your appearances starting with the
Government.

MR. ROBOTTI: Good morning, your Honor. Mike
Robotti Ryan Harris and Erin Reid for the United States.

THE COURT: Okay. For the defense?

MR. DE CASTRO: Good morning, your Honor. Cesar De
Castro and Valerie Gottlieb for defendant Luna appearing via
video.

THE COURT: All right. Anyone else need to note an
appearance?

I'll note the defendant is here, he's being assisted
by an interpreter who is on the phone.

I seem to be hearing someone speaking Spanish other
than the interpreter. What is with that? Maybe it's just an
echo on the interpreter. If anyone is listening, they are to
mute their audio on their computer or the phone.

Okay, we are here for an arraignment and status
conference. The arraignment is on a superseding -- Mr. Luna
if you don't understand something that I say, just raise your
hand to let me know and I'll rephrase it.

THE DEFENDANT: Thank you.

THE COURT: You're here because the Grand Jury has

STATUS CONFERENCE

1 returned a superseding Indictment charging you with a number
2 of crimes. The Superseding Indictment contains five counts,
3 all alleging a crime that you were alleged to have engaged in
4 between 2001 and the present.

5 Before I ask you, let me ask you -- is there someone
6 speaking Spanish?

7 THE INTERPRETER: I cannot hear what is being said.
8 I ask that people who are listening to mute their phones.

9 THE COURT: I just said that to my deputy clerk.

10 Can they be muted, Ms. Clarke.

11 COURTROOM DEPUTY: Yes, Judge.

12 THE INTERPRETER: There are people speaking Spanish
13 and it is not the defendant.

14 THE COURT: I know that, I hear Mexican reporters.
15 That's what I hear and I don't want to hear it. If they are
16 not muted, I will have to clear the video call.

17 Ms. Clarke, can you mute everyone but me?

18 COURTROOM DEPUTY: One moment, Judge.

19 THE COURT: Melanie, I can't hear you, your mic is
20 off.

21 COURTROOM DEPUTY: Judge, I'm muting it.

22 THE COURT: We'll standby for a moment to mute the
23 people who are speaking Spanish.

24 I've asked the Mexican press repeatedly to stop
25 speaking in a way that can be heard on the phone. It's

STATUS CONFERENCE

1 interrupting the conference. If I can't continue -- now I'm
2 hearing cropping by the press -- if I cannot continue I will
3 stop this call and reconvene it at a later time. I'm going to
4 ask the Mexican participants to, please once again, silence
5 your mic, turn it on mute.

6 THE INTERPRETER: He's --

7 THE COURT: Say that again?

8 THE INTERPRETER: A male said, he's scolding us.

9 THE COURT: Well, that's fine for that person to say
10 that, but I don't want to hear it.

11 My request to have those people who are supposed to
12 be listening on the call turn off their mic has not been
13 complied with. I'm going to adjourn this conference and we'll
14 find a different way to hold it. The time will be set
15 subsequently.

16 For now unless defense counsel or the prosecutor --
17 it will not go forward. We will notify you of the time, the
18 conference will be continued. Thank you.

19 (Proceeding adjourned.)

20 (Proceeding reconvening.)

21 THE COURT: We will continue with the arraignment
22 and status conference.

23 I do want to note that while I think the press is
24 still listening to the call and we cannot hear them. I want
25 to advise them, under the rules of this Court and of the

STATUS CONFERENCE

1 United States, they are prohibited from photographing,
2 recording or rebroadcasting court proceedings. Violation of
3 that prohibition may result in sanctions, including removal of
4 court-issued media credentials, restricted entry for future
5 hearings, and denial of entry to future hearings, or any other
6 sanctions that the Court deems necessary.

7 Now, picking up where we were before.

8 MR. ROBOTTI: Judge, just one preliminary matter, a
9 request, could we confirm the defendant's consent to have his
10 arraignment conducted by video under Rule 10?

11 THE COURT: First I will hear from defense counsel
12 as to whether there is that consent, Mr. De Castro?

13 MR. DE CASTRO: Yes, Judge, there is that consent.
14 I've spoken to Mr. Garcia Luna about appearing via video
15 conference for this proceeding.

16 THE COURT: Mr. Garcia Luna, is that correct, do you
17 consent to doing this proceeding by video?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Robotti, do you think I need to make
20 a finding under the CARES Act?

21 MR. ROBOTTI: No, your Honor. I think this is just
22 a Rule 10(c) matter, so that is sufficient.

23 THE COURT: Mr. Garcia Luna, as I was saying before,
24 the Superseding Indictment here contains five counts, all
25 alleging that you committed crimes between 2001 and the

STATUS CONFERENCE

1 present. I'm going to summarize each count for you.

2 Count One accuses you of being in a continuing
3 criminal enterprise. Specifically it alleges that you
4 committed six violations of law, which I'll go through with
5 you, that you committed those violations with five or more
6 people, that you supervised or managed those people, and that
7 you obtained substantial income from doing that.

8 Under Count One, the first three violations of law
9 with which you are charged allege that you worked with others
10 in obtaining cocaine from outside the United States and
11 distributing it within the United States.

12 MR. DE CASTRO: I'm sorry to interrupt. I note the
13 court reporter dropped off the screen. I'm not sure if she is
14 present or not.

15 THE COURT REPORTER: I am still present.

16 THE COURT: The amount for these three violations
17 are approximately 5,000 kilograms on or about September 13,
18 2008; 23,000 kilograms on or about October 30, 2007;
19 19,000 kilograms on or about March 18, 2007 respectfully.

20 The fourth, fifth and sixth violation of Count One
21 all allege that you worked with others in distributing
22 approximately 1997 kilograms of cocaine on or about
23 January 28, 2003; 1925 kilograms on or about August 16, 2002;
24 and 1923 kilograms on or about May 24, 2002. That's Count
25 One.

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STATUS CONFERENCE

1 Count Two accuses you of being a member of a
2 conspiracy to obtain cocaine from outside the United States to
3 distribute it within the United States.

4 Count Three accuses you of being a member of a
5 conspiracy to distribute and possess with intent to distribute
6 cocaine within the United States.

7 Count Four accuses you of being a member of a
8 conspiracy to import cocaine into the United States from
9 outside the United States.

10 And Count Five alleges that on or about June 1st,
11 2018, you falsely represented to U.S. Customs authorities that
12 you had never committed a crime for which you were not
13 arrested.

14 There is also a forfeiture allegation in the
15 Superseding Indictment that seeks to recover any money or
16 property that you received as a result of the charged crimes
17 or traceable to those crimes.

18 Mr. De Castro, have you reviewed the Superseding
19 Indictment with your client?

20 MR. DE CASTRO: Yes, I have, your Honor.

21 THE COURT: Do you have any concern as to whether he
22 understands the Superseding Indictment?

23 MR. DE CASTRO: No concerns at all.

24 THE COURT: Do you waive reading of the Indictment
25 beyond the summary that I just put on the record?

STATUS CONFERENCE

1 MR. DE CASTRO: Yes, we waive the public reading and
2 we ask that the record --

3 THE COURT: Is that a plea of not guilty to all five
4 counts?

5 MR. DE CASTRO: Yes, your Honor.

6 THE COURT: That plea is entered not guilty to all
7 five counts.

8 Now I have the status report that has been
9 submitted, which sounds fine. It's long, but I understand why
10 it needs to be long. Is there anything we need to do beyond
11 setting the next date and excluding time until that date?

12 MR. ROBOTTI: Not from the perspective of
13 Government, your Honor.

14 MR. DE CASTRO: Judge, the only thing I would add is
15 on page two of the status report we had mentioned that there
16 was some technological issues with respect to sharing material
17 via video with my client. Yesterday we were actually able to
18 do that via computer so it worked. It will be very tedious to
19 do it that way but it did work.

20 THE COURT: Thank you for stating that. I would
21 urge the parties to not be content with merely adequate, but
22 to keep working and see if the method of communicating with
23 documents can be improved.

24 MR. ROBOTTI: Thank you, Judge. We'll continue to
25 work with the defense and the MDC on this issue.

STATUS CONFERENCE

1 I just wanted to note that we did contact the MDC
2 and they advised us that the defense also has the option of
3 meeting with the defendant in person to review those
4 materials. So that is another option for them.

5 THE COURT: Okay. What is the date of the next
6 conference?

7 COURTROOM DEPUTY: December 7 at 10:30 a.m.

8 THE COURT: Does that work for the lawyers?

9 MR. ROBOTTI: Yes, Judge.

10 MR. DE CASTRO: I'm sorry, did Ms. Clarke say
11 December 7?

12 THE COURT: Yes.

13 MR. DE CASTRO: Yes, that's fine.

14 THE COURT: Okay, time is excluded until then as I
15 have previously designated this case as complex, and because
16 of the unusual circumstances surrounding the pandemic
17 communications between counsel and his client which has been
18 made more difficult and it takes more time. I find that the
19 ends of justice outweigh the interest of the public and the
20 defendant and a speedy trial so that the complexities can be
21 adequately addressed, both the case complexities and the
22 social complexities.

23 Anything further?

24 (Continued on next page.)

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STATUS CONFERENCE

1 MR. ROBOTTI: No, Judge. Thank you.

2 THE COURT: Thank you all for calling in. Thank you
3 Mr. Garcia Luna.

4 (Whereupon, the matter was concluded.)

5 * * * * *

6 I certify that the foregoing is a correct transcript from the
7 record of proceedings in the above-entitled matter.

8 /s/ Rivka Teich
9 Rivka Teich, CSR RPR RMR FCRR
10 Official Court Reporter
11 Eastern District of New York
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